

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries)	CC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Request for Waiver)	Application No.161061517
By Pribilof (Alaska) School District)	

APPLICATION FOR REVIEW AND REQUEST FOR WAIVER

Pursuant to section 1.115 of the Commission's rules,¹ the Pribilof (Alaska) School District (Pribilof or Applicant) respectfully requests that the Commission review a decision of the Wireline Competition Bureau (Bureau) to dismiss the Applicant's request for reconsideration of a Bureau denial of a request for waiver of the E-rate filing deadline for funding year 2016. Pribilof seeks Commission review because the Bureau's denial was contrary to precedent, involved a question of law or policy which has not previously been resolved by the Commission, and involved erroneous findings as to material questions of fact.² Accordingly, Pribilof respectfully asks the Commission to reverse the Bureau's conclusion that the posting of a notification on USAC's new E-rate Productivity Center (EPC) news feed constitutes adequate notice to an E-rate applicant of a filing deadline, and to grant the Applicant's request for waiver of the funding year 2016 filing deadline.

¹ 47 C.F.R. § 1.115.

² 47 C.F.R. § 1.115(b)(2)(i), (ii), (iv).

EXECUTIVE SUMMARY

The crux of this Application for Review is that USAC's rushed and troubled implementation of the new user portal for the E-rate program has caused a tiny Alaskan school district in the middle of the Bering Sea to lose \$300,000 of potential E-rate funding. The problems with USAC's implementation of the E-rate Productivity Center (EPC) are well known; Chairman Pai himself has criticized them in recent weeks. But in the underlying decision, the Bureau refused to consider these implementation problems and, in effect, placed the entire blame for USAC's failings on a school district that had—despite extremely limited resources—done everything it could to learn how to use the new system and comply with Commission rules and the applicable deadlines.

Commission precedent allows an applicant that has filed its application late to obtain a waiver from the Commission as long as it (1) requests a waiver from the Commission and (2) files its application within 14 days of the application deadline. Pribilof thought it had filed its application only four days late and, after not receiving any denial of funding from USAC, decided to request a waiver for the late-filed application from the Commission.

The Bureau denied Pribilof's request for waiver – not on the merits, but because the Bureau believed that Pribilof's waiver request was not filed within 60 days of denial of funding, and then dismissed Pribilof's petition for reconsideration for the same reason. The Bureau stated that USAC delivered this “notice” of the denial of funding via a “news feed” posting in the new IT portal. USAC never provided notice via email or any other means to the district's listed contact person, and, due to the format of the “news feed,” Pribilof never saw the “notice” nor even realized that it should have been looking for it there. The Bureau stated that once USAC

posted this “notice,” Pribilof either was aware or should have been aware of the decision and therefore should have filed its waiver request within 60 days.

The Bureau’s decision was erroneous because, as Pribilof explained in its petition for reconsideration, Pribilof never received the “decision” from USAC, and thus had no way of knowing when it should file a waiver request. Contrary to Commission precedent, Pribilof did not receive actual notice of USAC’s decision related to its application because USAC did not send a direct notification to Pribilof’s contact person via the new system, EPC; instead, USAC posted the decision in EPC’s Facebook-like news feed, among thousands of other actions directed to and taken by other EPC users on a daily basis. To receive the notice, Pribilof would have needed to know that its decision was somewhere in that news feed and have undertaken a search to find the decision. Unfortunately, because EPC was still a work in progress, Pribilof had no idea that it needed to search the news feed for a funding decision. As the Bureau noted, Pribilof was aware it could file a waiver, but it was waiting for USAC’s decision, as the Commission’s rule requires an appeal of a “decision of the Administrator.” The Bureau may have misunderstood or overlooked this fact, and as such its decision relied on an erroneous finding as to an important or material question of fact and must therefore be reversed. If the Bureau understood the facts regarding the notice, but denied the petition for reconsideration regardless, then the Bureau did not follow established precedent.

As such, if the Commission believes that its precedent on actual notice is not applicable to electronic notifications, the Bureau’s decision involves a question of policy that has not previously been resolved by the Commission. Pribilof also reasserts its request for a waiver of the program’s application deadline and whatever rules the Commission believes necessary to include Pribilof’s application for funding year 2016 among the applications considered for

funding because such a decision is in the public interest. Despite the problems created by the confusing and inadequate implementation of the EPC system, Pribilof diligently attempted to file its application in a timely manner, and therefore any errors on its part should be forgiven. The harm to Pribilof if it does not receive the funding it requested necessitates such a waiver. Pribilof therefore respectfully asks the Commission to reverse the Bureau's decision and waive the deadline for its funding year 2016 application.

TABLE OF CONTENTS

I.	BACKGROUND	6
II.	REVERSAL IS WARRANTED BECAUSE EITHER THE BUREAU MISTAKENLY FOUND THE EPC NEWS FEED POSTING WAS ACTUAL NOTICE, OR THE BUREAU'S DECISION IS CONTRARY TO PRECEDENT AND INVOLVES A QUESTION OF POLICY THAT HAS NOT PREVIOUSLY BEEN RESOLVED BY THE COMMISSION	10
a.	The Bureau's Decision Relied on Erroneous Findings As To Material Questions of Fact	10
b.	The Bureau's Decision Is Contrary To Precedent and Involves a Question of Policy That Has Not Previously Been Resolved By the Commission	12
III.	A WAIVER OF THE APPLICATION DEADLINE IS IN THE PUBLIC INTEREST IN LIGHT OF THE WELL-DOCUMENTED PROBLEMS WITH EPC and the application filing last year	17
IV.	CONCLUSION.....	20

I. BACKGROUND

The Pribilof School District serves 65 low-income kindergarten through grade 12 students on St. George and St. Paul Islands in the Bering Sea. This extremely isolated district lies approximately 300 miles from the west coast of Alaska, 250 miles north of the Aleutian Island chain, and 800 miles from Anchorage. Nearly 100 percent of Pribilof's students are Alaska Native, and 68 percent of the students live in poverty. The district consists of two K-12 schools and two public libraries that are located within the schools and used by the general public after school hours.³

Pribilof's business manager, Tammy L. White, submitted and certified its FCC Form 471 for funding year 2016 on July 25, 2016, four days after what she thought was the applicable filing deadline.⁴ Pribilof filed using the EPC portal on USAC's website.⁵ Once Ms. White filed the application, EPC generated a confirmation screen that said: "You have successfully filed FCC Form 471 #161061517 for FY 2016."⁶ Below that header was the following message:

Your application is being filed after the close of FY 2016 filing window. Funding for such requests will be prioritized after all applications submitted during the application window, as well as any other applications filed after the close of the window but before this application.⁷

³ Petition at 3.

⁴ Pribilof's application was due on July 21, 2016, because Pribilof had been advised to file as a consortium because its application covered both schools and libraries. As we explain below, Pribilof recently learned that its application was identified as a "school district" application rather than a consortium application, which means that its filing deadline was two months earlier than it had thought. The separate deadlines for school districts and consortia in funding year 2016 were new to the E-rate program (and thus new to Pribilof) and were necessitated by the problems with USAC's implementation of EPC.

⁵ Petition at 3.

⁶ *Id.*

⁷ *Id.*

Based on this message from USAC, Ms. White believed that Pribilof's application had been accepted. Ms. White did not believe filing the application late would result in an automatic denial of funding. She believed that if the district wanted to speed up the funding process, so that its application would be considered along with the "in-window" applicants, it would need to file a waiver request. In order to help the District prepare and file a request for waiver, the superintendent, Brett Agenbroad, enlisted Kela Halfmann, a state E-rate consultant based in Anchorage.⁸

Ms. Halfmann expected that Pribilof would receive a funding commitment decision letter from USAC, at which point the 60-day clock for filing the request for waiver would start. She checked USAC's website for an FCDL several times a week. In the meantime, she and the District prepared the request for waiver, but at no time did Ms. Halfmann, Ms. White, or Mr. Agenbroad have any reason to believe that a filing deadline had been established, as they had received no decision or any other notice from USAC about their application.

Pribilof never received an FCDL for funding year 2016; nor did it receive any other notification from USAC by mail or email. Eventually, Pribilof concluded that it should file its request for waiver of the application deadline with the Commission, even though it had never received any communication from USAC, and on November 18, 2016, it filed its request.⁹ On December 29, 2016, the Bureau denied Pribilof's request for waiver in a public notice.¹⁰ The Bureau identified Pribilof's request as an "Untimely Filed Request[] for Review."¹¹

⁸ Petition at 3-4.

⁹ Pribilof School District Request for Waiver, CC Docket No. 06-2 (filed Nov. 18, 2016).

¹⁰ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 13-184, Public Notice, DA 16-1448, at 13 (WCB, rel. Dec. 29, 2016) (*Public Notice*).

¹¹ *Id.* at 12.

The Bureau's denial was the first time Pribilof had seen any suggestion that a filing deadline had been established and that its waiver request had been filed late. After receiving the Bureau's decision and consulting with Commission staff, Pribilof examined its EPC account and email archives and still found no sign of any communication from USAC.¹² Finally, after much investigation, Ms. Halfmann discovered the following notice in the EPC "news feed," dated July 26, 2016:

This is an acknowledgement that USAC has received Pribilof School District's FCC Form 471 – 161061517 for Funding Year 2016 on 7/26/2016, which was submitted out-of-window. Therefore, your application will not be considered for funding.

TO REQUEST A WAIVER OF THE FILING DEADLINE:

The window filing requirement is contained in the Federal Communication [sic] Commission (FCC) rules for the E-rate program. USAC cannot consider requests for waivers of FCC rules. If you missed the FCC Form 471 filing window deadline and wish to request a waiver, you may file a waiver request with the FCC. When you file a waiver request, you should list 'CC Docket No. 02-6' on the first page of your waiver request. We strongly recommend that you review the information on the USAC website about filing waiver requests."¹³

Pribilof confirmed with USAC that the notice in the EPC news feed was not emailed to either the account administrator or the Form 471 contact, and that the notice in the news feed was thus the only indication from USAC that Pribilof needed to file a request for waiver with the Commission. The notice is not titled a decision of USAC and makes no mention of any deadline for filing the request for waiver. Pribilof had no idea that this notice was in the news feed; E-rate applicants had never been informed that they needed to check the news feed for funding decisions.

¹² Petition at 5.

¹³ See Exh. 1, screen shot of portal notification.

On January 26, 2017, Pribilof filed a petition for reconsideration with the Bureau.¹⁴ In its petition, Pribilof argued that it had never received a decision from USAC and thus did not know when the deadline was for filing a request for waiver, that the EPC news feed notification did not constitute adequate notice of a denial of funding, and that a waiver of the deadline was in the public interest.¹⁵

On April 28, 2017, the Bureau dismissed Pribilof's Petition in a streamlined public notice.¹⁶ In dismissing the Petition, the Bureau cited precedent in which it had dismissed petitions for reconsideration that "fail[ed] to identify any material error, omission, or reason warranting reconsideration, and rel[ied] on arguments that have been fully considered and rejected by the Bureau within the same proceeding."¹⁷ The Bureau also stated:

Pribilof School District suggests that the notice it received on July 25, 2016 that its application was out-of-window may have led it to believe that it might still receive funding even without a waiver. However, the message USAC sent it on July 26, 2016, via the EPC news feed, clearly stated that because its application was received out-of-window, it would not be considered for funding, although it could file a waiver of the filing deadline. In any case, Pribilof concedes that it knew it "would need to file a waiver of the application deadline" based on the July 25, 2016 notice, and that it did not do so within 60 days of receiving notice of its out-of-window status.¹⁸

Applications for review are due within 30 days of public notice of the underlying bureau action.¹⁹ Accordingly, this Application is timely filed.

¹⁴ Petition for Reconsideration of Pribilof School District, CC Docket No. 02-6 (filed Jan. 26, 2017) (Petition).

¹⁵ Petition at 5-7.

¹⁶ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, CC Docket Nos. 02-6, 96-45, DA 17-385 (rel. Apr. 28, 2017) (*Public Notice*).

¹⁷ *Id.* at 3 n.6.

¹⁸ *Id.* at 3 n.7.

¹⁹ 47 C.F.R. § 1.115(d), § 1.4.

II. REVERSAL IS WARRANTED BECAUSE EITHER THE BUREAU MISTAKENLY FOUND THE EPC NEWS FEED POSTING WAS ACTUAL NOTICE, OR THE BUREAU’S DECISION IS CONTRARY TO PRECEDENT AND INVOLVES A QUESTION OF POLICY THAT HAS NOT PREVIOUSLY BEEN RESOLVED BY THE COMMISSION

Pribilof respectfully argues that reversal of the underlying Bureau decision is warranted because the decision is contrary to precedent, involves a question of policy not yet addressed by the Commission, and involves erroneous findings as to material questions of fact. Given the way the Bureau’s dismissal is worded, it is unclear whether the Bureau believed that Pribilof *did* see the notice in the EPC news feed or that Pribilof *should have* seen it. If it was the former, then the Bureau’s decision should be reversed on the ground that it made erroneous findings as to a material question of fact, because Pribilof attested that it did not see the notice. If, as seems more likely, it was the latter—that is, if the Bureau concluded that notice of a funding denial in the EPC news feed is sufficient notice of the filing deadline for a request for waiver—then reversal is warranted because the Bureau’s decision is contrary to precedent and involves a question of policy that the Commission itself has not previously addressed.

A. The Bureau’s Decision Relied on Erroneous Findings As To Material Questions of Fact

The Bureau erred to the extent that it concluded that, as a factual matter, Pribilof had received actual notice from USAC that it was ineligible for funding because its E-rate application had been filed after the filing deadline, and as such, Pribilof had received notice of the deadline for filing a request for waiver with the Commission. On the contrary, not only did Pribilof demonstrate in its Petition that it received no such notice of a denial of funding from USAC, but in fact USAC incorrectly told Pribilof that its request for funding would be considered.²⁰ As a

²⁰ Specifically, as noted above, USAC told Pribilof its request for funding *would* be considered, but prioritized behind all of the applications filed on time and all late-filed applications that had been filed ahead of Pribilof’s.

result, the Petition explained, Pribilof assumed, not unreasonably, that a funding commitment decision letter would follow, and that the receipt of the FCDL would start the 60-day clock for filing a waiver request. The Bureau's apparent reliance on the July 26, 2016 EPC news feed notification—which Pribilof attested that it did not see—as evidence that Pribilof had sufficient notice of the waiver request filing deadline was erroneous. The Bureau's decision should therefore be reversed.

As noted above, the Bureau described its reasons for dismissing Pribilof's petition as follows:

Pribilof School District suggests that the notice it received on July 25, 2016 that its application was out-of-window may have led it to believe that it might still receive funding even without a waiver. However, the message USAC sent it on July 26, 2016, via the EPC news feed, clearly stated that because its application was received out-of-window, it would not be considered for funding, although it could file a waiver of the filing deadline. In any case, Pribilof concedes that it knew it “would need to file a waiver of the application deadline” based on the July 25, 2016 notice, and that it did not do so within 60 days of receiving notice of its out-of-window status.²¹

The first sentence of this rationale is at odds with what Pribilof said in its petition and is contradicted by the Bureau itself two sentences later. Pribilof made it clear in its petition that it knew that it could file a waiver request; the only thing that wasn't clear was when the waiver request was due. More importantly, though, the Bureau's second sentence suggests that the Bureau may have thought that Pribilof actually saw the notice USAC posted to the EPC news feed, even though Pribilof stated unequivocally that it neither saw the notice nor had any idea that it should be looking for a notice in the news feed. If this is indeed what the Bureau believed, then this misstatement of the facts of Pribilof's petition is grounds for reversal.

²¹ *Public Notice* at 3 n.7.

Finally, the Bureau’s stated rationale for dismissing Pribilof’s petition for reconsideration—that it “fail[ed] to identify any material error, omission, or reason warranting reconsideration” and that it “rel[ied] on arguments that [had] been fully considered and rejected by the Bureau within the same proceeding”²²—is wholly inconsistent with the substance of the petition. Prior to the Bureau’s denial of its request for waiver, Pribilof was unaware that its request had been filed late.²³ Accordingly, Pribilof’s petition for reconsideration consisted primarily of arguments that Pribilof had not previously made to the Bureau about why USAC’s notice was inadequate and why a waiver of the appeal deadline was in the public interest. The Bureau’s statement that Pribilof’s petition relied on arguments that had been fully considered and rejected by the Bureau is also a misstatement of the facts that warrants reversal.

B. The Bureau’s Decision Is Contrary To Precedent and Involves a Question of Policy That Has Not Previously Been Resolved By the Commission

To the extent that the Bureau meant that Pribilof *should have* seen the July 26 news feed notification, Pribilof respectfully argues that this finding is contrary to precedent and involves a question of policy that has not previously been resolved by the Commission, and that the Commission should therefore reverse the Bureau’s decision. It is unreasonable to expect that applicants who were using an electronic filing system for the first time, who were experiencing numerous, well-documented problems with that system, and who were accustomed to receiving and expected to receive notifications of funding decisions via letter or email, would have known—or could reasonably have been expected to know—to look for funding decision

²² *Public Notice* at 3 n.6.

²³ As the Petition explained, Pribilof did not realize until the Bureau denied its waiver request that its request for waiver had been filed late because it never received actual notice of a decision it could appeal. At no point did USAC inform Pribilof that the news feed notice (which Pribilof did not actually receive) in EPC was a decision that started the 60-day clock for filing a request for waiver of the application deadline. Pribilof believed that it would receive an FCDL – a reasonable assumption given the message it received when it filed – and that receipt of the FCDL would trigger the waiver request deadline.

notifications in the sprawling, unwieldy EPC news feed. In effect, the Bureau applied the Commission’s presumption of the receipt of mail that has been sent to a specific addressee to notifications posted to the EPC news feed. This approach was inconsistent with precedent and involved a question of policy that the Commission has not yet addressed. Thus, to the extent that the Bureau concluded that the news feed notification constituted adequate notice of a funding decision, Pribilof respectfully asks the Commission to reverse that conclusion.

As a procedural matter, the notice in the EPC news feed was insufficient notice that a filing deadline has been established. EPC is a new system with well-documented problems, and applicants are still learning how to use the system. 2016 was the first funding year in which applicants filed through EPC, and Pribilof did not know—indeed, *no* applicant could have known—that the EPC news feed would be the only notice it would receive that its application would not be considered, and the only information it would receive about filing a request for waiver. And, as noted above, Pribilof did not actually receive the news feed notice or know to look there for it.

Ignoring these obstacles, the Bureau’s decision tacitly established a presumption that if USAC posts a funding decision on the news feed, the applicant has received notice of the decision, regardless of whether the applicant has actually seen the notice. But this approach is contrary to precedent. In *Gardner v. FCC*, the D.C. Circuit found that the Commission must provide personal notice as to a decision, and rejected a Commission argument that posting the decision on its website was sufficient.²⁴ As a result of that decision, a petitioner “seeking consideration of an untimely filed pleading must show (1) when and how it received notice in

²⁴ See *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976).

fact; (b) that the time remaining was inadequate to allow it reasonably to timely file; and (c) that it acted promptly upon receiving actual notice.”²⁵ Here, Pribilof did not receive notice in fact until after its waiver request had been filed and denied. Pribilof eventually filed its waiver request because it had never received an FCDL from USAC and decided to just file the waiver request in the absence of any notice because it was a few months into the funding year. USAC’s failure to notify Pribilof personally of a funding decision, and the Bureau’s apparent conclusion that posting the decision on USAC’s web site was adequate notice, are contrary to the *Gardner* precedent. As such, the Commission should reverse the Bureaus’ dismissal and allow Pribilof to file its waiver request “late” as it never received actual notice.

The Commission’s E-rate precedent also calls for personal notice to applicants.²⁶ The Commission has established a presumption for the E-rate program that, absent contrary evidence, a letter which has been mailed to a specific entity has been received by the addressee.²⁷ However, the same presumption cannot reasonably be applied where the correspondence has not been “mailed” (or even emailed) at all, but the notification has merely been posted on a brand new, unfamiliar, electronic clearinghouse.

²⁵ See *Centro Cultural de Mexico en El Condado de Orange, Application for a Construction Permit for a New LPFM Station at Santa Ana, California*, Memorandum Opinion and Order, 31 FCC Rcd. 838, 839 n.7 (2016) (citing *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976)).

²⁶ See, e.g., *Requests for Waiver of Decisions of the Universal Service Administrator by Central Technology Center*, CC Docket No. 02-6, Order, 27 FCC Rcd 5086, 5087 ¶ 1 (Wireline Comp. Bur. 2012) (“We also grant one petitioner . . . a waiver of our 60-day filing deadline for appeals because we find the petitioner submitted its appeal to USAC within a reasonable period of time after receiving *actual notice* of USAC’s adverse decision. (emphasis added)); *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, 11019 ¶ 2 (Wireline Comp. Bur. 2011) (“We first grant five petitioners waivers of our filing deadline for appeals because we find they submitted their appeals to the Commission within a reasonable period of time after receiving *actual notice* of USAC’s adverse decision.” (emphasis added)).

²⁷ *Request for Review of the Decision of the Universal Service Administrator by Hickory Public Schools*, CC Docket No. 02-6, Order, DA 07-2694, ¶ 5 (Wireline Comp. Bur. 2007) (“[T]he Commission has held that, absent a showing to the contrary, an item mailed is presumed to be received by the addressee”) (citing *Request for Special Relief by Midwest Video Corp.*, Memorandum Opinion and Order, 43 FCC 2d 262, 263 ¶ 3 (1973)).

To be clear, the EPC news feed is not tailored for the individual applicant; it is a Facebook- or Twitter-like feed containing all sorts of notifications addressed to all EPC users. In other words, when Ms. Halfmann looked at the news feed, she did not just see items directed to Pribilof; she saw a massive list of notices directed to *all* applicants.²⁸ The content of the news feed is so voluminous, and so cluttered with trivial and irrelevant notifications, that even if Ms. White or Ms. Halfmann had known to look for notification from USAC about Pribilof's application in the news feed, they could easily have missed it. Under these circumstances, it is completely inappropriate and insufficient for USAC to use the news feed as the sole means of contacting an applicant about a crucial deadline. It is equally inappropriate for the Bureau to have concluded that posting an item to the news feed constitutes actual notice to the applicant.²⁹

Appropriate notice is all the more important now that the filing window is an absolute deadline. Unfortunately, USAC's IT system has not recognized this rule change, which the Commission adopted in the 2014 *Second Modernization Order*. As a result, the confirmation page that is generated when an application is filed incorrectly informed applicants that they are simply not in the first priority of applications to be considered, which was how applications were treated under the old rule. This statement would lead an applicant to believe that it would be in the next batch of funding committed, after those applications that were filed in-window had been addressed, and indeed that is what Ms. White thought.

Using the news feed as the sole means of notifying applicants of the need to file a waiver request is not just insufficient because of the difficulty of finding anything in the enormous volume of notices that the feed contains. It is also inconsistent with how USAC issues

²⁸ An example of what the news feed looks like on a typical day is attached as Exhibit. 2.

²⁹ In prior decisions, the Bureau has based decisions on whether to grant waivers on the receipt of *actual* notice by E-rate applicants. See note 26.

notifications of other decisions that trigger appeal rights and obligations. When USAC issues a funding commitment decision letter, it sends an email to the contacts listed on the FCC Form 471. If the Commission is going to treat the notification of an out-of-window filing as a decision, it should require USAC to email the notification to the applicant's contact person in the same way other adverse decisions are emailed. Applicants should not have to check the EPC news feed every day to make sure they haven't received some important piece of correspondence from USAC. Such a requirement would make the program even more burdensome to applicants who are already struggling to navigate the application process.

Pribilof sought reconsideration not only because it received insufficient notice from USAC, but also because Commission precedent requires leniency toward applicants that file their waiver requests late. In its 2010 *Academy of Math and Science* order, the Commission established the criteria justifying special circumstances for the waiver of the application deadline.³⁰ In that order, the Commission granted numerous waiver requests that were filed months after the window closed.³¹ For example, in funding year 2009, the waiver request filed by Bedford Public Schools was granted even though it was filed six months after the window closed, because the district filed its application less than 14 days after the window closed.³² That was true for several other applicants as well.³³ In fact, some schools filed more than a year after

³⁰ *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (*Academy of Math and Science*).

³¹ *Id.* Even if the notification that USAC attempts to issue now was not available at that time, USAC or the Commission needs to be more clear to applicants that that notification is the “decision” that starts the appeal clock. Better yet, USAC should replace the incorrect language that appears with the language from the notification, plus the 60-day deadline for filing a waiver should be included. In addition, that notification should be emailed to the contacts listed on the FCC Form 471.

³² *Academy of Math and Science* at Appendix B.

³³ *See, e.g.*, waiver requests filed by: Berryhill Independent School District 10 (funding year 2008 window closed Feb. 7, 2008, waiver request filed August 19, 2008); Burnet Consolidated Independent School District (funding year

the window closed for their funding year.³⁴ Here, Pribilof filed its request for waiver in a time period comparable to those applicants whose waivers were granted in *Academy of Math and Science*. Pribilof understands that the Commission needs to have an orderly administration of the program, and that firm deadlines are an essential component. However, Pribilof respectfully argues that the Bureau's treatment of its late-filed request for waiver of the application deadline was inconsistent with the *Academy of Math and Science* precedent. The leniency that the Commission exhibited in *Academy of Math and Science* is all the more appropriate under the circumstances here, where USAC failed to give the applicant sufficient notice of the deadline and a sufficient explanation of the process.

III. A WAIVER OF THE APPLICATION DEADLINE IS IN THE PUBLIC INTEREST IN LIGHT OF THE WELL-DOCUMENTED PROBLEMS WITH EPC AND THE APPLICATION FILING LAST YEAR

Finally, a waiver of the filing deadline in this case would advance the E-rate program's goals and would be in the public interest. Any of the Commission's rules may be waived if good cause is shown.³⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁷

2007 window closed Feb. 7, 2007, waiver request filed Oct. 23, 2007); Congregation Machon Tieferes (funding year 2009 window closed Feb. 12, 2009, waiver request filed Sept. 14, 2009); Greenport Union Free School District (funding year 2008 window closed Feb. 7, 2008, waiver request filed Sept. 18, 2008).

³⁴ See *Academy of Math and Sciences*, Appendix B, petitioner Academy of Math and Sciences (funding year 2005 window closed Feb. 18, 2005, waiver request filed July 19, 2006; Arlington Public Schools, funding year 2006 window closed Feb. 16, 2006, waiver request filed August 13, 2007).

³⁵ 47 C.F.R. § 1.3.

³⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

³⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

In this case, Pribilof’s difficulties filing its FCC Form 471 on time, and its subsequent inability to determine the deadline for filing a request for waiver with the Commission, are directly related to the well-documented problems that E-rate applicants have faced during the transition to EPC. Chairman Pai himself has expressed frustration that EPC, which was supposed to be fully operational by the opening of the funding year 2016 filing window, “is still not adequately functional” well into 2017.³⁸ In a recent letter to USAC, Chairman Pai noted that “EPC implementation issues have created major headaches for applicants requesting E-Rate funding”³⁹ and sought assurances that USAC would focus its efforts “on supporting and completing the basic EPC functionality needed to ensure that applicants can apply for and receive their funds, and perform other necessary tasks, in a timely fashion.”⁴⁰

In light of Chairman Pai’s concerns about the harms and difficulties applicants have faced during the implementation of EPC, Pribilof urges the Commission to consider the hardships it faced as it attempted to navigate EPC and seek funding for 2016. As noted above, Pribilof is located on islands in the middle of the Bering Sea, 300 miles from the mainland.⁴¹ Spotty Internet connection hindered Pribilof’s ability to file its FCC Form 471 for 2016 on time, as its connection repeatedly timed out. In addition, staffing changes temporarily limited Pribilof’s access to EPC and left it without experienced E-rate staff.

³⁸ Letter from Chairman Ajit Pai, FCC, to Chris Henderson, CEO, USAC, at 1 (Apr. 18, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344459A1.pdf.

³⁹ *Id.*

⁴⁰ *Id.* at 2; *see also* Letter from Chairman Ajit Pai, FCC, to Senator Dan Sullivan, at 1 (May 8, 2017) (“Unfortunately, there recently have been serious flaws in the administration of the E-Rate program—flaws regarding the application process for schools and libraries and in particular the development and roll-out of the online E-Rate Productivity Center (EPC).”).

⁴¹ *See* Exh. 3.

When Pribilof tried to file its application through EPC, it experienced numerous problems. Notably, Pribilof was unable to input the necessary poverty data; after seeking assistance from USAC and still finding itself unable to load the data, USAC staff finally entered the poverty data on the school district's behalf. Because Pribilof was an applicant that included libraries, it understood its filing deadline to be July 21, 2016. At the time school district applications were due in late May, USAC was advising Pribilof that it was still able to file by the July deadline.⁴² After the Bureau's dismissal of Pribilof's petition for reconsideration, however, Bureau staff informed Pribilof that it had identified itself as a "school district" rather than as a "consortium" on its application, and that its application therefore had been filed not four days late, as Pribilof believed, but 61 days late, because the school district deadline rather than the consortium deadline apparently applied. As explained in the attached affidavit, Pribilof staff have no memory of selecting "school district" and suspect that USAC staff may have selected it when assisting Pribilof with filing in EPC.⁴³ Commission precedent allows the Bureau to grant a late-filed application when the application is filed within 14 days of the deadline.⁴⁴ Given the confusion around the EPC system, around Pribilof's filing status, and the two filing deadlines last year, the Commission should consider Pribilof's application to fall within this deadline.

Further, Pribilof tried diligently to educate itself about the new system and comply with the rules. Pribilof's business manager, Tammy White, made every effort to learn how to use EPC. She attended a USAC training in Portland, Oregon, in November 2015, hoping to learn how to navigate EPC. Upon arriving at the training, Ms. White discovered that USAC had no

⁴² If Pribilof was supposed to file in the first window period, USAC should have told it so when it was helping Pribilof with its data. If it had done so, Pribilof could have filed within 14 days of that deadline.

⁴³ See Affidavit of Tammy L. White, attached.

⁴⁴ See *Academy of Math and Science*.

slides on how to use EPC. Thus, after spending more than \$2,000 to learn how to use EPC, Pribilof knew no more than it had before, and was forced to do the best it could with EPC on its own.⁴⁵ In light of all of these challenges, Pribilof urges the Commission to consider the technological and logistical challenges faced by a tiny, extraordinarily remote school district navigating a new and troubled electronic filing system for the first time.

Most importantly, though, as Pribilof argued unsuccessfully to the Bureau, it would be unjust and contrary to E-rate program goals to penalize a poor, isolated school district that did the best it could to comply with the E-rate rules after receiving incorrect and incomplete information from USAC. The school district acted in good faith at all times, and there was no waste, fraud, or abuse. Granting the instant petition not only would cause no harm to the Fund; it would instead advance the goals of the program by allowing available E-rate funds to reach one of the remotest, most economically vulnerable school districts in the United States that serves a predominantly Native population. As Pribilof stated in its request for waiver, the loss of 2016 funding over a mere procedural error would create a “dire financial hardship” for an already challenged school district.⁴⁶ As such, it is in the public interest for the Bureau to grant the requested relief. Accordingly, Pribilof respectfully requests that the Commission waive section 54.720 of its rules to the extent necessary to grant the requested relief.⁴⁷

IV. CONCLUSION

For the foregoing reasons, Pribilof respectfully requests that the Commission grant this application for review, reverse the Bureau’s dismissal of Pribilof’s petition for reconsideration,

⁴⁵ Ms. White’s attached affidavit describes in detail her difficulties with EPC and her frustration with the USAC training she attended.

⁴⁶ *Id.*

⁴⁷ 47 C.F.R. § 54.720.

grant Pribilof's request for waiver of the funding year 2016 application deadline, and instruct USAC to make a commitment regarding Pribilof's application for funding year 2016. To the extent any other waivers are necessary to effectuate this relief, Pribilof respectfully requests that those be granted as well.

Respectfully submitted,

/s/ Gina Spade

Gina Spade
Broadband Legal Strategies
1629 K Street, NW Suite 300
Washington, DC 20006
DC Bar # 452207
gina@broadbandlegal.com
202-907-6252

May 30, 2017

Affidavit of Tammy L. White

I, Tammy L. White, swear:


1. That I am business manager for the Pribilof School District. I have been in that position since July 1, 2015.
2. That I have read the foregoing application for review and avow that the information stated therein is true and correct to the best of my knowledge and belief.
3. In addition, I provide the following description of my efforts to learn how to use USAC's E-rate Productivity Center, and the difficulties we faced in filing our application for funding year 2016.
4. E-rate Training –November 2015 in Portland, OR. I attended this training, which promised to have live demonstrations of EPC, and the new application process. The presenters from USAC continued to give apologies for not having them ready. The reason, they said, was that EPC was not yet up and available for the demo. The training stated that the new portal would "improve the customer experience."
5. The particular demonstration I was interested in was the Forms 470 and 471. The downloaded handout had two pages: first a title page, and next a page with "Live demonstration of the FCC Form 470" written on it. Unfortunately, the USAC staff were not prepared with a live demo, and no PowerPoint of the step by step process. The same exact thing happened for Form 471.
6. At the Portland training, I received a handout called "How to Use the Portal." The Overview stated that the training would be on, "Advantages of the portal, How to log in, How to create a new user – My Landing page, How to update entity information, How to modify an account administrator, and How to add a consultant. Nowhere that I can find

or remember that this presentation explained the “News” in the upper left corner of slide #11. It was after the first appeal was denied, that I found out it is where an entity receives information on its applications.

7. Nor did I learn “How to update entity information,” which is where my troubles started when filing our application. Logging into EPC, I was able to file Form 470 in March. But when it was time to complete the Form 471, I kept getting to the page where the poverty level information needed to be completed. Repeatedly, I tried to find out how to enter it by looking on the website, looking through the training material and trying to find help in EPC. I can’t count how many times I tried and, after frustration, I’d come back to it later.
8. Filing the Application. Knowing that the district had community libraries within the school, it seemed logical that I had until the libraries’ applications were due to complete the task.
9. I reached out to USAC’s HATS staff in late May or early June 2016 for assistance. USAC’s staff assured me that my application could still be filed and finally near the end of June, the USAC staff uploaded the district data. But when they did, they gave me a new BEN (billed entity number). I did not understand why we needed a new BEN, but I decided to go with it because the application needed to be filed. I do not recall selecting the type of entity for the district.
10. Of course, this was at the end of one fiscal year and the beginning of another – just when a business manager is at their busiest. Also, adding to the stress, the previous superintendent had left the district and was moving on to a new job and the current superintendent was not yet at work. When I finally set out to finish the application, it took

me longer than I expected and it ended up getting certified four days after the consortium application deadline.

11. Petition for Reconsideration. Finally, the Commission's denial of our petition for reconsideration stated that I knew the application was denied because I knew we would have to file a waiver. That is not accurate. After certifying the application, a screen shot of the Certifier Information stated, "Your application is being filed after the close of FY2016 filing window. Funding for such request will be prioritized after all applications submitted during the application window as well as any other applications filed after the close of the window but before this application." Based on this message from USAC, I believed that Pribilof's application had been accepted. I did not believe filing the application late would result in an automatic denial of funding. I believed that if the district wanted to speed up the funding process, so that its application would be considered along with the "in-window" applicants, it would need to file a waiver request.
12. All through this process, I did repeatedly sign into EPC and try to get this done. But without proper training and understanding of their product it was impossible for me to be successful. It seems like USAC through their training on EPC set many up for failure.


Tammy L. White
Business Manager
Pribilof School District
P.O. Box 207
St. Paul Island, AK 99660

Subscribed and sworn to before me this 30th day of May, 2017.

[Seal]




Notary Public

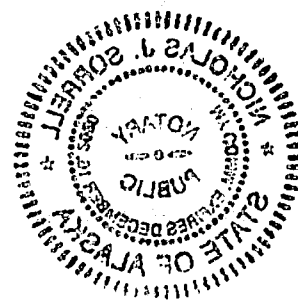


Exhibit 1

Screen Shot of EPC "News Feed" Notification, dated July 26, 2016



E-rate Productivity Center This is an acknowledgement that USAC has received Pribilof School District's FCC Form 471 - 161061517 for Funding Year 2016 on 7/26/2016, which was submitted out-of-window. Therefore, your application will not be considered for funding.

TO REQUEST A WAIVER OF THE FILING WINDOW DEADLINE:

The window filing requirement is contained in the Federal Communication Commission (FCC) rules for the E-rate program. USAC cannot consider requests for waivers of FCC rules. If you missed the FCC Form 471 filing window deadline and wish to request a waiver, you may file a waiver request with the FCC. When you file a waiver request, you should list "CC Docket No. 02-6" on the first page of your waiver request. We strongly recommend that you review the information provided on the USAC website about filing waiver requests.

Please keep a copy of this notification for your records. To print this notification, click on the Date below, and use your browser's print function.

You can view your entire Form 471 by clicking the link below.

[Internet Access - #16...](#) [#17000376 - Pribilof ...](#)

Jul 25, 2016 ☆ 🔒 [Comment](#) [Hide Info ▲](#)

**Application
Number** 161061517

Entity Number 17000376

Certification Date Jul 26, 2016

Exhibit 2

Example of News Feed in EPC

[Click here to post...](#)



USAC's Internal System A new RFP document titled, EMC-Amendment 3 associated with FCC Form 470 170066844 filed by DIVISION OF TECHNOLOGY was uploaded into the EPC system on 5/22/2017 12:17 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

EMC_Storage Products... #145704 - DIVISION O...

Monday, 12:17 PM ☆ 🔒 Comment



USAC's Internal System A new RFP document titled, Attach B-EMC Enhanced Supp associated with FCC Form 470 170066844 filed by DIVISION OF TECHNOLOGY was uploaded into the EPC system on 5/19/2017 4:40 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

EMC_Storage Products... #145704 - DIVISION O...

Friday, 4:40 PM ☆ 🔒 Comment



USAC's Internal System A new RFP document titled, AttachD-EMC Prod Warr-Main associated with FCC Form 470 170066844 filed by DIVISION OF TECHNOLOGY was uploaded into the EPC system on 5/19/2017 4:38 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

EMC_Storage Products... #145704 - DIVISION O...

Friday, 4:38 PM ☆ 🔒 Comment



USAC's Internal System A new RFP document titled, Attach C-EMC Prem Supp associated with FCC Form 470 170066844 filed by DIVISION OF TECHNOLOGY was uploaded into the EPC system on 5/19/2017 4:35 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

EMC_Storage Products... #145704 - DIVISION O...

Friday, 4:35 PM ☆ 🔒 Comment



USAC's Internal System A new RFP document titled, Attach A-EMC Basic Support associated with FCC Form 470 170066844 filed by DIVISION OF TECHNOLOGY was uploaded into the EPC system on 5/19/2017 4:33 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

EMC_Storage Products... #145704 - DIVISION O...

Friday, 4:33 PM ☆ 🔒 Comment



USAC's Internal System A new RFP document titled, EMC-Amendment 2 associated with FCC Form 470 170066844 filed by DIVISION OF TECHNOLOGY was uploaded into the EPC system on 5/19/2017 4:32 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

EMC_Storage Products... #145704 - DIVISION O...

Friday, 4:32 PM ☆ 🔒 Comment



SL NewsBriefs A new edition of the SL NewsBrief is available. This electronic publication will give you information about upcoming funding commitments, tips to help you through the application process, and other timely information.

Read this NewsBrief to learn about the Funding Year (FY) 2017 Application Filing Window, FY2017 Program Integrity Assurance (PIA) reviews, FY2017 Service Provider Annual Certification (SPAC) Forms and FY2016 FCC Form 500 reviews.



NewsBrief Friday May 19 2017
PDF 215 KB

Friday, 2:29 PM ☆ 🛡️ Comment



Starr Garter ok

Monday, 9:33 AM



SL NewsBriefs A new edition of the SL NewsBrief is available. This electronic publication will give you information about upcoming funding commitments, tips to help you through the application process, and other timely information.

Read this NewsBrief to learn about next steps related to the Funding Year 2017 Application Filing Window.



NewsBrief Friday May 12 2017
PDF 134 KB

May 12, 2017 ☆ 🛡️ Comment



Starr Garter OK

May 17, 2017



USAC's Internal System A new RFP document titled, NETWORK EQUIP. RFP 17-18 associated with FCC Form 470 170081373 filed by LEBANON CITY SCHOOL DISTRICT was uploaded into the EPC system on 5/11/2017 11:09 AM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

NETWORKSWITCHES... #129811 - LEBANON C...

May 11, 2017 ☆ 🛡️ Comment



USAC's Internal System A new RFP document titled, NETWORK EQUIP. RFP 17-18 associated with FCC Form 470 170081373 filed by LEBANON CITY SCHOOL DISTRICT was uploaded into the EPC system on 5/11/2017 10:55 AM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

NETWORKSWITCHES... #129811 - LEBANON C...

May 11, 2017 ☆ 🛡️ Comment



USAC's Internal System A new RFP document titled, Y20_WLAN_Intent_to_Award_2017_0504 associated with FCC Form 470 170074618 filed by SAN FRANCISCO UNIF SCHOOL DIST was uploaded into the EPC system on 5/7/2017 6:59 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

SanFranciscoUSDFY20... #144152 - SAN FRANC...

May 7, 2017 ☆ 🛡️ Comment



USAC's Internal System A new RFP document titled, Y20_LAN_Intent_to_Award_2017_0504 associated with FCC Form 470 170074621 filed by SAN FRANCISCO UNIF SCHOOL DIST was uploaded into the EPC system on 5/7/2017 6:55 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

SanFranciscoUSDFY20... #144152 - SAN FRANC...

May 7, 2017 ☆ 🛡️ Comment



USAC's Internal System A new RFP document titled, LTEFailoverRFP associated with FCC Form 470 170082440 filed by CRETE MONEE SCHOOL DIST 201 U was uploaded into the EPC system on 5/5/2017 4:35 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

The Crete-Monee SD 2... #135518 - CRETE MO...

May 5, 2017 ☆ 🛡️ Comment



USAC's Internal System A new RFP document titled, RFP 2017 cat 2 revised FriendsCS associated with FCC Form 470 170082845 filed by FRIENDS CENTRAL UPPER SCHOOL was uploaded into the EPC system on 5/5/2017 3:37 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

2017FriendsCentral470... #20167 - FRIENDS CE...

May 5, 2017 ☆ Comment



USAC's Internal System A new RFP document titled, RFP 2017 cat 2 revised FriendsCS associated with FCC Form 470 170075165 filed by FRIENDS CENTRAL UPPER SCHOOL was uploaded into the EPC system on 5/5/2017 3:34 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

2017FriendsCentral470... #20167 - FRIENDS CE...

May 5, 2017 ☆ Comment



SL NewsBriefs A new edition of the SL NewsBrief is available. This electronic publication will give you information about upcoming funding commitments, tips to help you through the application process, and other timely information.

Read this NewsBrief to learn about CSB hours during the last week of the filing window and tips for last-minute filers.



NewsBrief Friday May 5 2017
PDF 37 KB

May 5, 2017 ☆ Comment



Starr Garter OK

May 8, 2017



USAC's Internal System A new RFP document titled, Thrall ISD - RFP for Network Electronics - Addendum 2 - 05-04-17 associated with FCC Form 470 170079352 filed by THRALL INDEP SCHOOL DISTRICT was uploaded into the EPC system on 5/5/2017 8:47 AM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

470YEAR2017CAT2w/... #141084 - THRALL IND...

May 5, 2017 ☆ Comment



USAC's Internal System A new RFP document titled, Dulce Cost_Reponse_Form-Attachment-D (2) associated with FCC Form 470 170080650 filed by DULCE SCHOOL DISTRICT was uploaded into the EPC system on 5/5/2017 7:12 AM CDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

17-Fiber_Dulce - #1700... #143274 - DULCE SCH...

May 5, 2017 ☆ Comment



USAC's Internal System A new RFP document titled, csl_y20_rfp_amendment_20170504 associated with FCC Form 470 170069572 filed by CELERITY SCHOOLS LOUISIANA was uploaded into the EPC system on 5/4/2017 4:28 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

csl_y20_470_c1_c2 - #... #16081973 - CELERIT...

May 4, 2017 ☆ Comment



USAC's Internal System A new RFP document titled, ceg_y20_rfp_amendment_20170504 associated with FCC Form 470 170069647 filed by CELERITY EDUCATIONAL GROUP was uploaded into the EPC system on 5/4/2017 4:24 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

ceg_y20_470_c1_c2 - ... #17006823 - CELERIT...

May 4, 2017 ☆ Comment



USAC's Internal System A new RFP document titled, FY2017 E-rate Long Beach Network Equipment RFP Q and A Addendum 5-4-17 r3 associated with FCC Form 470 170081465 filed by LONG BEACH PUBLIC LIBRARY was uploaded into the EPC system on 5/4/2017 3:30 PM EDT. This document is available for download by clicking on the FCC Form 470 record link below and then clicking on 'View RFP documents'.

Exhibit 3
Map of Alaska and its Islands

